Registered Charities Newsletter
Newsletter No. 9

For information on the following issues, please contact us at 954-0410 for local Ottawa calls (English), or at 954-6215 (bilingual). For toll-free long distance calls, dial 1-800-267-2384 (English), or dial 1-888-892-5667 (bilingual). You can also write to us at the **Charities Division, Canada Customs and Revenue Agency, Ottawa, ON K1A 0L5**. Our fax numbers are (613) 946-2423 and (613) 952-6020.

The following are a number of commonly asked questions that charities have asked us recently:

Once a registered charity has met its disbursement quota, can it use any extra funds to make gifts to individuals or to organizations that are not qualified donees?

A registered charity can only transfer funds to other registered charities and similar qualified donees (other organizations to which an individual can make a contribution and receive a tax credit for income tax purposes).

The *Income Tax Act* requires a registered charity to spend a specified amount, called the "disbursement quota" on direct program activities or on transferred funds to qualified donees every year. Some people have interpreted this rule as allowing charities to give funds to any other organization once their disbursement quota had been met. This interpretation has been reviewed and is, in our opinion, incorrect.

A registered charity can undertake direct program activities through its employees or volunteers, or under certain conditions, through agents or contractors. A charity can transfer funds to organizations that are not qualified donees only if these latter organizations are using the funds on behalf of the charity and to carry out the charity's own activities. In this case, the charity should have a formal written arrangement with individuals or organizations that act on its behalf, which spells out the particular duties or activities that the charity wishes them to perform. Such arrangements should also make it clear that the charity continues to direct and control the resources it is transferring. For more information, please refer to the draft publication called *Registered Charities: Operating Outside Canada (RC4106E)*. The final version of this publication will be available soon.

What is a donor benefit?

The Canada Customs and Revenue Agency is concerned about a misconception circulating within the charitable sector concerning the definition of a gift. This misconception is causing unnecessary alarm for charities.

Some people have misread paragraph 15(f) of Interpretation Bulletin IT-110R3, *Gifts and Official Donation Receipts*, to mean that a donor cannot give to a charity from which the donor benefits to the same level as anyone else. This is not true—and unduly restricts the concept of a gift. A problem only arises when a donor stands to specifically gain by making a "gift" to a charity.

A charity may only issue official donation receipts for gifts. It is well established at law that a gift is a voluntary transfer of property for which donors receive no consideration (*i.e.*, no direct and exclusive personal benefit for themselves or other persons in which they have a purely private and personal interest) in return for the gift. The donor must freely dispose of the property, and the gift must be made from detached and disinterested generosity, out of affection, respect or charity. This is a long-standing definition of what qualifies as a gift and is not a recent innovation by the Canada Customs and Revenue Agency. A donor can still take an interest in a charity's work, make a gift and receive a tax receipt.

A donor who supports a favourite symphony, hospital, library, or church with a payment for which the donor does not directly receive something in return, is likely making a gift. But, a tax receipt cannot be issued to a donor who "gives" to a charity on the understanding that he or she will receive some special benefit in direct return for the payment. For example, it is not a gift if a person donates a painting to a museum and, in return, expects the museum experts to provide free appraisals for the donor's private art collection.

The circumstances of each particular case determine whether a payment is really a gift for income tax purposes.

How do you establish the value of gifts-in kind?

Gifts-in-kind are non-cash gifts. They include gifts of land, vehicles, shares, and works of art. Unlike a cash gift, the value of a gift-in-kind is not immediately apparent. The charity should have the gift appraised before it can issue a tax receipt to the donor.

In its pamphlet *Gifts and Income Tax*, the Canada Customs and Revenue Agency recommends that the appraiser should not be associated with either the donor or the charity receiving the gift. However, if a member of the charity's staff is familiar with the type of property in question, he or she could perform the appraisal if:

- the value of the gift is $1,000 or less;
- an independent appraiser cannot reasonably be located; or
- the appraisal involves unreasonable expense, even though the value of the gift might be more than $1000.

The Canada Customs and Revenue Agency cautions charities to be wary of appraisals produced by a donor who has not consulted with the charity, especially if:

- the appraised amount appears unreasonably high in the charity's judgement;
- the person who performed the appraisal is the person who sold the property to the donor;
- members of the charity's staff are unfamiliar with the type of property being offered; or
- the type of property is unusual, or otherwise difficult to appraise.

Should charities use only the Business Number (BN) on their official donation receipts?

Yes. The transition period during which charities could use the old-style registration number ended in September 1998. All official donation receipts should now show the charity's BN-style registration number. BN-style registration numbers have the following format: 123456789RR0001.

Reminder

Please remember to include a copy of your financial statements when filing your annual return.

This newsletter forms part of a series. Keep this for future reference. All previous newsletters can be viewed on our Website: **www.ccra-adrc-gc.ca/charities**